

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Complaints by Parents Television Council)	File No. EB-03-IH-0362, <i>et al.</i> ¹
Against Various Broadcast Licensees)	
Regarding Their Airing Of)	
Allegedly Indecent Material)	

MEMORANDUM OPINION AND ORDER

Adopted: December 8, 2004

Released: January 24, 2005

By the Commission: Commissioner Copps approving in part, dissenting in part and issuing a statements; Commissioner Martin approving in part, dissenting in part and issuing a statement at a later date.

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we deny 15 complaints filed by the Parents Television Council ("PTC")² against various television broadcast licensees alleging violations of the federal restrictions regarding the broadcast of indecent material.³ PTC provided transcripts of the segments it considers indecent and provided videotapes of each of the 15 programs referenced in the complaints. PTC asks that, should the Commission find the material in each complaint indecent, it issue a notice of apparent liability for forfeiture against the licensee and every other licensee that aired the material. After reviewing the material provided by PTC, we conclude that the complained of material is not patently offensive pursuant to contemporary community standards for the broadcast medium and is therefore not indecent.

II. DISCUSSION

2. It is a violation of federal law to broadcast obscene, indecent or profane programming. Specifically, title 18 of the United States Code, section 1464 prohibits the utterance of "any obscene, indecent or profane language by means of radio communication."⁴ The Federal

¹ See Appendix for a listing of the complaints addressed in this *Order*, filed between July 3, 2003, and January 22, 2004.

² Between July 3, 2003, and January 22, 2004, PTC filed 15 separate complaints discussed herein against various television licensees. Each complaint alleges that each of the subject licensees broadcast indecent material on programs aired between October 29, 2001, and December 11, 2003.

³ See 18 U.S.C. § 1464; 47 C.F.R. § 73.3999.

⁴ 18 U.S.C. § 1464.

Communications Commission, which is authorized to license radio and television broadcast stations, is responsible for enforcing the statutory and regulatory provisions restricting obscenity, indecency and profanity.⁵ Consistent with a subsequent statute and court case,⁶ section 73.3999 of the Commission's rules provides that radio and television stations shall not broadcast obscene material at any time, and shall not broadcast indecent material during the period 6 a.m. through 10 p.m.⁷ The Commission may impose a monetary forfeiture, pursuant to section 503(b)(1) of the Communications Act of 1934, as amended⁸ (the "Act"), upon a finding that a licensee has broadcast obscene, indecent or profane material in violation of 18 U.S.C. § 1464 and section 73.3999 of the rules.

3. The Commission's role in overseeing program content is limited, however, by the First Amendment to the United States Constitution and section 326 of Act, which prohibit the Commission from interfering with broadcasters' freedom of expression and from censoring program material.⁹ Thus, any consideration of government action against allegedly indecent programming must take into account the fact that such speech is protected under the First Amendment and demands that we proceed cautiously and with appropriate restraint when considering enforcement action in such matters.¹⁰

4. The Commission defines indecent speech as language that, in context, depicts or describes sexual or excretory activities or organs in terms patently offensive as measured by contemporary community standards for the broadcast medium.¹¹

Indecency findings involve at least two fundamental determinations. First, the material alleged to be indecent must fall within the subject matter scope of our indecency

⁵ Federal courts consistently have upheld Congress's authority to regulate the broadcast of indecent speech, as well the Commission's interpretation and implementation of the governing statute. *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). See also *Action for Children's Television v. FCC*, 852 F.2d 1332, 1339 (D.C. Cir. 1988) ("ACT I"); *Action for Children's Television v. FCC*, 932 F.2d 1504, 1508 (D.C. Cir. 1991), cert. denied, 503 U.S. 914 (1992) ("ACT II"); *Action for Children's Television v. FCC*, 58 F.3d 654 (D.C. Cir. 1995) (en banc), cert. denied, 516 U.S. 1043 (1996) ("ACT III").

⁶ See Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (1992), as modified by ACT III.

⁷ See 47 C.F.R. § 73.3999.

⁸ See 47 U.S.C. § 503(b)(1). See also 47 U.S.C. § 312(a)(6) (authorizing license revocation for indecency violations).

⁹ U.S. CONST., amend. I; 47 U.S.C. § 326.

¹⁰ ACT I, 852 F.2d at 1344 ("Broadcast material that is indecent but not obscene is protected by the First Amendment; the FCC may regulate such material only with due respect for the high value our Constitution places on freedom and choice in what people may say and hear."); *id.* at 1340 n.14 ("the potentially chilling effect of the FCC's generic definition of indecency will be tempered by the Commission's restrained enforcement policy.").

¹¹ *Infinity Broadcasting Corporation of Pennsylvania*, Memorandum Opinion & Order, 2 FCC Rcd 2705 (1987) (subsequent history omitted) (citing *Pacifica Foundation*, Memorandum Opinion & Order, 56 FCC 2d 94, 98 (1975), *aff'd sub nom. FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)).

definition—that is, the material must describe or depict sexual or excretory organs or activities. . . . Second, the broadcast must be *patently offensive* as measured by contemporary community standards for the broadcast medium.¹²

None of the broadcasts described below meets the second part of our standard.¹³

5. In determining whether material is patently offensive, the Commission has indicated that the “*full context* in which the material appeared is critically important,”¹⁴ and has articulated three “principal factors” for its analysis: “(1) the *explicitness or graphic nature* of the description or depiction of sexual or excretory organs or activities; (2) whether the material *dwells on or repeats at length* descriptions of sexual or excretory organs or activities; (3) *whether the material appears to pander or is used to titillate*, or *whether the material appears to have been presented for its shock value*.”¹⁵ In examining these three factors, we must weigh and balance them to determine whether the broadcast material is patently offensive because “[e]ach indecency case presents its own particular mix of these, and possibly, other factors.”¹⁶ In particular cases, one or two of the factors may outweigh the others, either rendering the broadcast material patently offensive and consequently indecent,¹⁷ or, alternatively, removing the broadcast material from the realm of indecency.¹⁸

6. Outlined below is a description of the allegedly indecent material cited in PTC’s complaints.

a. Boston Public,” October 29, 2001, 8 p.m. EST: a student challenges a teacher’s assignment, and the teacher says to the student, “Did you know, Mr. Pratt, that you are a big dick? Do we have any other big dicks with us today?”¹⁹ In a subsequent scene, another character

¹² *Industry Guidance on the Commission’s Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency*, Policy Statement, 16 FCC Rcd 7999, 8002 (2001) (“*Indecency Policy Statement*”) (emphasis in original).

¹³ Because we deny the complaints due to their failure to meet the “patently offensive” factor in our indecency analysis, we need not address whether any of the complaints fail to depict or describe sexual or excretory organs or activities.

¹⁴ *Indecency Policy Statement*, 16 FCC Rcd at 8002, ¶ 9 (emphasis in original). In *Pacifica*, the Court “emphasize[d] the narrowness of [its] holding and noted that under the Commission rationale that it upheld, “context is all-important.” 438 U.S. at 750.

¹⁵ *Indecency Policy Statement*, 16 FCC Rcd at 8003, ¶ 10 (emphasis in original).

¹⁶ *Id.*

¹⁷ *Id.* at 8009, ¶ 19 (citing *Tempe Radio, Inc (KUPD-FM)*, Notice of Apparent Liability, 12 FCC Rcd 21828 (MMB 1997) (forfeiture paid) (extremely graphic or explicit nature of references to sex with children outweighed the fleeting nature of the references); *EZ New Orleans, Inc. (WEZB(FM))*, Notice of Apparent Liability, 12 FCC Rcd 4147 (MMB 1997) (forfeiture paid) (same)).

¹⁸ *Indecency Policy Statement*, 16 FCC Rcd at 8010, ¶ 20 (“the manner and purpose of a presentation may well preclude an indecency determination even though other factors, such as explicitness, might weigh in favor of an indecency finding”).

¹⁹ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon,

asks the teacher whether he wants to get fired, and the teacher responds, “Is this about me calling a student a dick?”²⁰ The other character admonishes him, “No more dick talk.”²¹

b. “AUSA,” March 18, 2003, 9:30 p.m. EST: one scene depicts Adam, a lawyer, lying on a hotel bed watching an adult movie on the hotel’s video system (no video images are visible).²² Dialogue from one video, “Here Comes the Judge,” is audible: Male voice: “The defense rests.” Female voice: “Not tonight. Now hand over those briefs.”²³ The next scene shows the lawyer waking up and realizing that the adult channel continued to play while he slept.²⁴ Remaining scenes contain jokes about his watching adult entertainment all night, to wit: Adam: “What’s [my boss] going to say when he finds out I spent nine of my 16 hours here in Arizona watching porn?” Clerk: “You’re a sad, lonely man with remarkable stamina.” Another scene depicts a woman asking Adam if “he’s decent,” and he remarks: “I’m buttered from the waist down.”²⁵ Another scene has a character listing the movies Adam paid for: “Jurassic Pork, Laid in Manhattan, Catch Me in the Can.”

c. Night of Too Many Stars,” May 31, 2003, 8 p.m. EDT: comedian Dana Carvey, reprising his role as the Saturday Night Live character, “Church Lady,” says to the actor Macaulay Culkin: “...then we jumped on the puberty train and got all tingly . . . we want to fornicate, so we thought it would be nifty to get married when we were twelve.”²⁶ Dana Carvey later discusses Michael Jackson and says of him: “Did he ever dangle anything in front of you at the sleepovers? . . . Say, his happy man-loaf? . . . When he moon walked, he didn’t moon you as he walked, did he? . . . Did he ever get into Billy’s jeans?”²⁷ Another character asks whether “his [Jackson’s] shalonthaz [sic] ever rose up to salute you? You never played hide the toast?”²⁸

d. “Friends,” October 23, 2003, 8 p.m. EDT: in an apparent mix-up, a bakery inadvertently substitutes a cake shaped like a penis for a child’s birthday cake (the cake is not shown). A female character exclaims, “Ahh! They put my baby’s face on a penis!”²⁹ A male

Chief, Enforcement Bureau, dated August 22, 2003 (EB-03-IH-0419).

²⁰ *Id.*

²¹ *Id.*

²² See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated July 3, 2003 (EB-03-IH-0363).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated July 3, 2003 (EB-03-IH-0362).

²⁷ *Id.*

²⁸ *Id.*

²⁹ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated October 29, 2003 (EB-03-IH-0661).

character replies, “Uhh, is it okay that I still think it looks delicious?”³⁰ Another male character says: “I am this close to tugging on my testicles again.”³¹ When the mix-up is corrected, a male character again comments that the cake “looked more delicious when it was a penis.”³²

e. “The Next Joe Millionaire,” October 28, 2003, 8 p.m. EST: the complaint alleges that a character says “fuck off.”³³ Based on our review of the tape, however, this description is inaccurate in that no character appears to utter the quoted language.

f. “One Tree Hill,” October 28, 2003, 9 p.m. EST: one female character is depicted putting her lips to a hose that had been inserted into a gas tank.³⁴ Seeing this, another female character quips, “Had a lot of practice? Siphoning gas, what’d you think I meant?”³⁵

k. “A Minute with Stan Hooper,” October 29, 2003, 8:30 p.m. EST: The title character interviews two men who are married [to each other] and asks how they decided to use one surname over the other.³⁶ They respond that, since the surname of one of the pair was Cockburn, they thought that it would be an inappropriate married name for two gay men (the man named Cockburn fans his genital area with his apron).³⁷

l. “Friends,” November 6, 2003, 8 p.m. EST: certain characters use the words “hell,” “damn,” and the phrase “sons of bitches.”³⁸ There is also a scene in which one character asks a man to guess which person had received a grant, and the man answers, “Well, unless it’s the creepy guy with his hand up his kilt, I’m gonna say congratulations.”³⁹ Later, the character is wondering aloud how he can get someone to issue him a grant, and he asks the man, “Is there anything I can do to butter him up?” The man replies, “He does have a pretty serious latex fetish.”⁴⁰

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated November 3, 2003 (EB-03-IH-0681).

³⁴ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated November 3, 2003 (EB-03-IH-0668).

³⁵ *Id.*

³⁶ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated November 12, 2003 (EB-03-IH-0678).

³⁷ *Id.*

³⁸ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated November 12, 2003 (EB-03-IH-0662).

³⁹ *Id.*

⁴⁰ *Id.*

m. “Will & Grace,” November 6, 2003, 9 p.m. EST: a male character with a very strong attachment to his mother describes the greatest tragedy of his life as “the day they yanked me from the breast of that saint.”⁴¹ A female character, Karen, has a grudge against a woman named Lorraine; when Karen locates her, she says “I could do to her what she did to Stan – have sex with her until she dies. Yep, that’s what I’m gonna do.”⁴² She then knocks on a door and says, “Open up, Lorraine, and put on a condom.”⁴³ There is another scene in which Karen talks about “sex[ing] the life out of” Lorraine. Certain characters say the words “bitch,” “bosom,” and “whore.” The show also contains several scenes in which male characters talk about kissing men and female characters talk about kissing women.

n. “Scrubs,” November 6, 2003, 9:30 EST: one character says the word “bastards,” and another character describes a woman as having “huge cans.”⁴⁴ One scene contains the following dialogue: Dan: “I heard there’s a bed in the on-call room. You ever get hot and heavy in there?” JD: “No, I usually am there by myself.” Dan: “So yes.”⁴⁵ In another scene, a male character takes a pair of boxer shorts from the freezer, and another male character says “Make sure you’re nice and dry down there. Otherwise, you could get a tongue-on-the-flagpole situation.”⁴⁶ There is another scene in which two female characters discuss whether they’ve ever had “phone sex” with their boyfriends. One of the character’s responds that when her boyfriend, Turk, returned home for Thanksgiving, she called and was surprised by how much “Turk’s eleven year-old nephew sounds like him . . . and how worldly he is.”⁴⁷ In a later scene, one of the women is shown standing alone in a cornfield, at night, talking on the phone with her boyfriend, and she says: “Hi sweetie – are you naked? OK, um, now imagine me taking off my shirt, kissing down your neck . . . now I am licking your nipples all over. Your nipples.” She is then interrupted by a group of boy scouts hiking through the field and ends her conversation abruptly by saying, “I don’t care how close you are. I’ll call you later.”

o. “Friends,” November 13, 2003, 8 p.m. EST: certain characters use the words “hell,” “crap,” “pissed,” “bastard,” and the phrase “son of a bitch.”⁴⁸ One character says he “didn’t say the F-word.”⁴⁹ Other characters ponder where a male character may have hidden “porn.”⁵⁰ A

⁴¹ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated November 12, 2003 (EB-03-IH-0664).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated November 17, 2003 (EB-03-IH-0666).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated November 12, 2003 (EB-03-IH-0663).

⁴⁹ *Id.*

⁵⁰ *Id.*

male character states, “You broke my heart. Do you know how many women I had to sleep with to get over you?”⁵¹

p. “The Simpsons,” November 16, 2003, 8 p.m. EST: in this animated program, a scene depicts students carrying picket signs that read “Don’t cut off my pianissimo” and “What would Jesus glue?”⁵² A male character says “Well, I guess this story has a happy ending after all. Just like my last massage.”⁵³

q. “Run of the House,” November 20, 2003, 9:30 p.m. EST: one character, Kirk, says to a policeman, “Thanks for stopping by, dick.” The policeman remarks that he is a patrolman, not a detective, and asks why Kirk called him a “dick.” Kirk retorts, “you seem like such a dick to me.”⁵⁴

r. “King of the Hill,” November 23, 2003, 7:30 p.m. EST: in this animated program, a cartoon boy is shown about to enter a communal shower at his school. An off-screen voice emanating from the shower asks, “Is that a pimple or another nipple?”⁵⁵ As the cartoon boy removes his towel and enters the shower, his buttocks are briefly depicted.⁵⁶

s. “Scrubs,” December 11, 2003, 9:30 p.m. EST: a female patient emits moans of pleasure while a female doctor gives her a pelvic exam.⁵⁷ A male doctor ribs the female doctor by saying, “Don’t be embarrassed. You’re not the first person to give a patient an orgasm during a pelvic exam.” The male doctor fantasizes about the female doctor’s examining an attractive woman wearing a lacey bra. Another doctor comments that the other male doctor “never really satisfied a woman,” to which the doctor responds, “Well, you might want to double check with your mom.”⁵⁸

7. To support a finding of indecency, we must determine whether any of the material cited by PTC meets the Commission’s definition of “patently offensive” – namely, does any of the material graphically or explicitly depict or describe sexual organs or activities, does any of the material dwell on or repeat depictions or descriptions of sexual organs or activities, and is any of the material designed to pander, titillate, or shock. Based on our review of the programs listed above,

⁵¹ *Id.*

⁵² See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated November 24, 2003 (EB-03-IH-0671).

⁵³ *Id.*

⁵⁴ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated December 4, 2003 (EB-03-IH-0715).

⁵⁵ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated December 4, 2003 (EB-03-IH-0714).

⁵⁶ *Id.*

⁵⁷ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated January 22, 2004 (EB-03-IH-0087).

⁵⁸ *Id.*

we find that none of the material referenced in PTC's complaints rises to the level of being patently offensive.

8. Two complaints cite uses of the word "dick." In context and as used in the complained of broadcasts, these were epithets intended to denigrate or were a play on words. Their use in these contexts was not sufficiently explicit or graphic and/or sustained to be patently offensive. Similarly, we find that fleeting uses of the words "hell," "damn," "orgasm," "penis," "testicles," "breast," "nipples," "can," "pissed," "crap," "bastard," and "bitch," uttered in the context of the programs cited in a number of complaints, are not profane and do not represent graphic descriptions of sexual or excretory organs or activities such that the material is rendered patently offensive by contemporary community standards for the broadcast medium. Although use of such words may, depending on the nature of the broadcast at issue, contribute to a finding of indecency, their use here was not patently offensive and therefore not indecent. We also find that the material containing inaudible or bleeped expletives do not render the broadcasts patently offensive. In such cases, the broadcaster has exercised appropriate editorial control over its programming by deleting or editing out utterances that might otherwise constitute indecent material. Finally, we find that none of these words, in context, was profane.

9. One of the complaints cites material that depicts partial nudity. That complaint involved the animated program "King of the Hill," which contained a rudimentary depiction of a cartoon boy's buttocks was fleeting. In context, we do not find the material to be sufficiently graphic or explicit, or sustained, to rise to the level of being patently offensive.

10. Several complaints concern material that alludes to sexual activity or depicts men and women engaging in physical activity that implies sexual activity. None of the complained of material was sufficiently graphic or sustained to rise to the level of being patently offensive for the broadcast medium, however.

11. The remaining complaints focus on vague references or innuendo to sexual organs or activities. In context, the references and innuendos cited in the complaints were not sufficiently graphic or explicit and were not repeated or dwelled upon.

III. CONCLUSION

12. For the reasons discussed above, we find that none of the material contained in the 15 complaints is patently offensive as measured by contemporary community standards for the broadcast medium. We therefore conclude that none of the material in the complaints is indecent.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, that the 15 complaints listed in the Appendix are hereby DENIED.

14. IT IS FURTHER ORDERED that a copy of this *Memorandum Opinion and Order* shall be sent by Certified Mail Return Receipt Requested to The Parents Television Council, 707 Wilshire Boulevard, Los Angeles, California 90017, and to the licensees that are the subject of the instant complaints.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

CASE NUMBER	CALL SIGN/ COMMUNITY OF LICENSE	LICENSEE	Program/Air Date/Time
EB-03-IH-0419	WTTG(TV) Washington, DC	Fox Television Stations, Inc.	Boston Public, October 29, 2001, 8 p.m. EST
EB-03-IH-0363	WRC-TV Washington, DC	NBC Telemundo License Co.	AUSA, March 18, 2003, 9:30 p.m. EST
EB-03-IH-0362	WRC-TV Washington, DC	NBC Telemundo License Co.	Night of Too Many Stars, May 31, 2003, 8 p.m. EDT
EB-03-IH-0661	WRC-TV Washington, DC	NBC Telemundo License Co.	Friends, October 23, 2003, 8 p.m. EDT
EB-03-IH-0681	WTTG(TV) Washington, DC	Fox Television Stations, Inc.	The Next Joe Millionaire, October 28, 2003, 8 p.m. EST
EB-03-IH-0668	WBDC-TV Washington, DC	WBDC Broadcasting, Inc.	One Tree Hill, October 28, 2003, 9 p.m. EST
EB-03-IH-0678	WTTG(TV) Washington, DC	Fox Television Stations, Inc.	A Minute with Stan Hooper, October 29, 2003, 8:30 p.m. EST
EB-03-IH-0662	WRC-TV Washington, DC	NBC Telemundo License Co.	Friends, November 6, 2003, 8 p.m. EST
EB-03-IH-0664	WRC-TV Washington, DC	NBC Telemundo License Co.	Will & Grace, November 6, 2003, 9 p.m. EST
EB-03-IH-0666	WRC-TV Washington, DC	NBC Telemundo License Co.	Scrubs, November 6, 2003, 9:30 p.m. EST
EB-03-IH-0663	WRC-TV Washington, DC	NBC Telemundo License Co.	Friends, November 13, 2003, 8 p.m. EST
EB-03-IH-0671	WTTG(TV) Washington, DC	Fox Television Stations, Inc.	The Simpsons, November 16, 2003, 8 p.m. EST
EB-03-IH-0715	WBDC-TV Washington, DC	WBDC Broadcasting, Inc.	Run of the House, November 20, 2003, 9:30 p.m. EST
EB-03-IH-0714	WTTG(TV) Washington, DC	Fox Television Stations, Inc.	King of the Hill, November 23, 2003, 7:30 p.m. EST
EB-04-IH-0087	WRC-TV Washington, DC	NBC Telemundo License Co.	Scrubs, December 11, 2003, 9:30 p.m. EST

**STATEMENT OF COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, DISSENTING IN PART**

*Re: Complaints by Parents Television Council against Various Broadcast Licensees
Regarding Their Airing of Allegedly Indecent Material*

We continue to hear from citizens who are concerned about sexually explicit and profane programming on the airwaves and the potentially detrimental effects of this programming on our children. As an initial matter, I would note that this Commission has a solemn obligation to respond to consumer complaints. These complaints are increasing exponentially from a few hundred only a couple of years ago to over 1 million in 2004. And in the last few years, complaints about television broadcasts have equaled or exceeded those about radio broadcasts. Yet, although the Commission recently has begun to take action against indecency on television, some citizens remain concerned that the FCC summarily dismisses their complaints. At the same time, some broadcasters contend that the Commission has not been adequately clear about how it determines whether a broadcast is indecent. Today's rather cursory decisions do little to address any of these concerns.

In these two Orders, the Commission combines 36 unrelated complaints with no apparent rhyme or reason other than that they concern television broadcasts. The Commission then denies these complaints with hardly any analysis of each individual broadcast, relying instead on generalized pronouncements that none of these broadcasts violates the statutory prohibition against indecency on the airwaves. I believe that some of these broadcasts present a much closer call. Exemplary of the complaints that should not have been summarily denied is one concerning *The Diary of Ellen Rimbauer*, which I believe may very well violate the statutory prohibition against indecency.

Although it may never be possible to provide 100 percent certainty because we must always take into account the specific context, developing guidance and establishing precedents are critically important Commission responsibilities. We serve neither concerned consumers nor the broadcast industry with the approach adopted in today's item.